

SENATE BILL 3898

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 56, relative to small businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-28-106(a), is amended by adding a new subdivision (3):

(3) Failure to meet the performance measures set out in subdivision (a)(1) shall cause the recapture of investment tax credits previously claimed and the forfeiture of future investment tax credits to be claimed by participating investors with respect to a TNInvestco as follows:

(A) Failure of a TNInvestco to meet the requirement for certification in subdivision (a)(1)(A) causes the forfeiture of all investment tax credits to be claimed by a participating investor with respect to the TNInvestco;

(B) For a TNInvestco that meets the requirements for certification under subdivision (a)(1)(A) and subsequently fails to meet the requirements for certification under subdivision (a)(1)(B), any investment tax credit that has been or will be taken by a participating investor on or before the third anniversary of the allocation date is not subject to recapture or forfeiture, but any investment tax credit that has been or will be taken by a participating investor after the third anniversary of the allocation date of the TNInvestco shall be recaptured or forfeited;

(C) For a TNInvestco that meets the requirements for certification under subdivision (a)(1)(B) and subsequently fails to meet the requirements for certification under subdivision (a)(1)(C), any investment tax credit that has been

or will be taken by a participating investor on or before the fourth anniversary of the allocation date is not subject to recapture or forfeiture, but any investment tax credit that has been or will be taken by a participating investor after the fourth anniversary of the allocation date of the TNInvestco shall be recaptured or forfeited;

(D) For a TNInvestco that meets the requirements for certification under subdivision (a)(1)(C) and subsequently fails to meet the requirements for certification under subdivision (a)(1)(D), any investment tax credit that has been or will be taken by a participating investor on or before the sixth anniversary of the allocation date is not subject to recapture or forfeiture, but any investment tax credit that has been or will be taken by a participating investor after the sixth anniversary of the allocation date of the TNInvestco shall be recaptured or forfeited; and

(E) For a company that has invested an amount cumulatively equal to 100 percent of its base investment amount in qualified investments, any investment tax credit claimed or to be claimed by a participating investor is not subject to recapture or forfeiture.

SECTION 2. Tennessee Code Annotated, Section 4-28-110, is amended by deleting subdivision (a)(2)(A) and substituting instead the following:

(A) Whether the designated capital received by the TNInvestco has been invested as required within the time provided in § 4-28-106(a)(1) and the amount of the qualified TNInvestco's remaining uninvested designated capital at the end of the immediately preceding taxable year;

SECTION 3. Tennessee Code Annotated, Section 4-28-111, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) The department shall provide the qualified TNInvestco a summary of findings including any areas of noncompliance. The qualified TNInvestco shall have sixty (60) days to cure any areas of noncompliance, provided that there shall be no cure period for failure to comply with the requirements of § 4-28-106 (a)(1) and such investment tax credits shall be recaptured or forfeited within sixty days after notice and hearing within sixty (60) days. Failure to cure all other areas of noncompliance within sixty (60) days shall result in a penalty of ten thousand dollars (\$10,000) per day until the noncompliance is cured. The proceeds from any such penalty shall be deposited into the Tennessee Rural Opportunity Fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed under this section.

SECTION 4. This act shall take effect July 1, 2010, the public welfare requiring it.